



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 22, 2022

Ms. Sarah E. Alexander
Open Records Coordinator
Texas Military Department
P.O. Box 5218
Austin, Texas 78763-5218

OR2022-29305

Dear Ms. Alexander:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 970792 (PIR T22-107).

The Texas Military Department (the "department") received a request for e-mails, text messages, or instant messages sent to or from a named employee during a specified time period pertaining to fifteen specified terms. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note portions of the submitted information, which we have marked, are not responsive to the instant request because they were created after the date the request was received. The department need not release non-responsive information in response to this request, and this ruling will not address that information.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin

2002, no pet.). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

The department states the submitted information “contain[s] specific [department] locations of involvement” and reveals the department’s “practices and limitations in aiding the other government agencies in the detection of criminal activity.” The department asserts disclosure of the information at issue “would disclose location names, addresses, and highlight military involvement at these locations . . . and drastically diminish the [department]’s ability to assist other government agencies and/or secure personnel and equipment during future operations due to increased risk and vulnerability of persons or property.” Based upon the department’s representations and our review, we agree the release of some of the submitted information would interfere with law enforcement and crime prevention. Accordingly, the department may withhold the information we marked under section 552.108(b)(1) of the Government Code.¹ However, we find the department has failed to demonstrate release of any of the remaining information would interfere with law enforcement or crime prevention. Therefore, the department may not withhold any of the remaining information under section 552.108(b)(1).

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note section 552.108 is generally not applicable to purely administrative records that do not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). You state the information at issue “could potentially be subject to an open and ongoing investigation.” Upon review, we find you have failed to demonstrate release of the remaining information

¹ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

would interfere with the detection, investigation, or prosecution of crime for purposes of section 552.108(a)(1). Accordingly, the department may not withhold any of the remaining information under section 552.108(a)(1).

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information protected by chapter 418 of the Government Code. As part of the Texas Homeland Security Act (the “HSA”), sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make confidential certain information related to terrorism. Section 418.176(a) of the Government Code provides, in relevant part, the following:

Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

- (1) relates to staffing requirements of an emergency response provider, including law enforcement agency, a fire-fighting agency, or an emergency services agency; [or]
- (2) relates to a tactical plan of the provider[.]

Id. § 418.176(a)(1)-(2). Section 418.177 of the Government Code provides the following:

Information is confidential if the information:

- (1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and
- (2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Id. § 418.177. The fact that information may relate to a governmental body’s security concerns does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Upon review of the arguments and the information at issue, we find the department has failed to demonstrate the applicability of section 418.176 or section 418.177 to the remaining information.

Therefore, the department may not withhold the remaining information under section 552.101 on either of those bases.

Section 552.101 of the Government Code also encompasses section 437.232 of the Government Code, which provides, as follows:

(a) In this section, “military personnel information” means a service member’s name, home address, rank, official title, pay rate or grade, state active duty orders, deployment locations, military duty addresses, awards and decorations, length of military service, and medical records.

(b) A service member’s military personnel information is confidential and not subject to disclosure under Chapter 552.

Id. § 437.232 . Upon review, we find the remaining information contains military personnel information maintained by the Texas military forces. *See id.* § 437.001(8) (providing “service member” for purposes of chapter 437 means a member or former member of the state military forces or a component of the United States armed forces, including a reserve component), (13) (providing the department is the state agency charged with administrative activities in support of the Texas military forces), (14) (providing that “Texas military forces” for purposes of chapter 437 means the Texas National Guard, the Texas State Guard, and any other military forces under state law). Accordingly, the department must withhold the names of the service members at issue, their home addresses, ranks, official titles, pay rates or grades, deployment locations, military duty addresses, awards and decorations, and lengths of military service under section 552.101 in conjunction section 437.232 of the Government Code.² However, we find the department has failed to demonstrate the remaining information consists of military personnel information that is subject to section 437.232. Therefore, the department may not withhold the remaining information under section 552.101 on that basis.

Section 552.117(a)(11) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a current or former member of the Texas military forces who requests that this information be kept confidential under section 552.024 of the Government Code. *See id.* § 552.117(a)(11). Section 552.117(a)(11) applies to the Texas military forces as that term is defined by section 437.001 of the Government Code. *See id.* § 437.001. We note section 552.117 is also applicable to a personal cellular telephone number, provided the cellular telephone service is not paid for by a governmental body. *See Open Records Decision No. 506 at 5-6 (1988)* (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117(a)(11) must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989)*. Therefore, the department must withhold information under section 552.117 on behalf of a current or former member of the Texas military forces only if the individual

² As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024, the department must withhold the personal cellular telephone numbers we marked under section 552.117(a)(11) if the cellular telephone service is not paid for by a governmental body. However, we find the remaining information is not information subject to section 552.117. Thus, the department may not withhold the remaining information on that basis.

In summary, the department may withhold the information we marked under section 552.108(b)(1) of the Government Code. The department must withhold the names of the service members at issue, their home addresses, ranks, official titles, pay rates or grades, deployment locations, military duty addresses, awards and decorations, and lengths of military service under section 552.101 in conjunction section 437.232 of the Government Code. If the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code, the department must withhold the personal cellular telephone numbers we marked under section 552.117(a)(11) of the Government Code if the cellular telephone service is not paid for by a governmental body. To the extent the information at issue pertains to an individual who is subject to section 552.1175(a) of the Government Code and who elects to restrict access to their information in accordance with section 552.1175(b) of the Government Code, the department must withhold the cellular telephone number we marked under section 552.1175 of the Government Code; however, the cellular telephone number at issue may be withheld only if a governmental body does not pay for the cellular telephone service. The department must release the remaining information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/jm

Ref: ID# 970792

Enc. Submitted documents

c: Requestor
(w/o enclosures)